



October 7, 2022

**SUBMITTED VIA FOIAONLINE.GOV**

National FOIA Office  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2310A)  
Washington, DC 20460

**Re: Freedom of Information Act Request regarding ConocoPhillips Alaska, Inc.'s Willow Master Development Plan**

Dear FOIA Officer:

Earthjustice, on behalf of Conservation Lands Foundation, submits this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

**Documents Requested**

On February 7, 2022, the Bureau of Land Management (BLM) announced it will prepare a supplemental environmental impact statement (SEIS) for ConocoPhillips Alaska, Inc.'s (ConocoPhillips) Willow Master Development Plan (Willow project) in the National Petroleum Reserve-Alaska (Reserve). 87 Fed. Reg. 6890 (Feb. 7, 2022). BLM released a draft SEIS in July 2022 and on August 29, 2022, the U.S. Environmental Protection Agency (EPA) submitted comments on the draft.

**We request copies of all records, including any communications between EPA, BLM, and others, in EPA's possession, custody, or control concerning the draft EIS or the Willow project in general. The relevant time period is February 7, 2022 and the date of this request, inclusive. This request specifically excludes documents posted on BLM's ePlanning site, <https://eplanning.blm.gov/eplanning-ui/project/109410/570>.**

For purposes of this request, the term "records" means information of any kind, including, but not limited to, documents (handwritten, typed, electronic or otherwise produced, reproduced, or stored), letters, e-mails, facsimiles, memoranda, correspondence, notes, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. As used herein, "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these requests any information that might be deemed outside their scope by any other construction.

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Further, for purposes of this request, the term “records” includes any personal email messages and attachments, telephone voice mails or text messages, and internet “chat” or social media messages, to the full extent that any such messages fall within the definition of “agency records” subject to FOIA, 5 U.S.C. § 552.

We request an index or log of any records withheld from disclosure. Please include the maximum possible information you can provide to identify each record withheld, including a description of the record, its date, its location, its author(s), its recipient(s), and the specific reason(s) it is being withheld. *See, e.g., Morley v. CIA*, 508 F.3d 1108, 1122-23 (D.C. Cir. 2007).

We kindly request you provide the requested documents in electronic format on a rolling basis if possible.

### **Fee Waiver Requested**

We request a waiver of any fees associated with this request.

FOIA mandates that agencies waive or reduce search and copying fees where the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1).

In addition to the statutory directive, EPA has issued regulations outlining criteria that it considers in deciding whether a fee waiver is warranted. These fee waiver criteria require that: (1) the subject of the requested records concern identifiable operations or activities of the Federal government; (2) the disclosure is likely to contribute significantly to public understanding of government operations or activities; and (3) the disclosure is not primarily in the requester’s commercial interest. *See* 40 C.F.R. § 2.107(l)(2)-(3).

As one court explained, if a non-profit organization has “identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership,” then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that Conservation Lands Foundation meets the required criteria and is entitled to a full fee waiver.

#### **1. The subject of the requested records concerns identifiable operations and activities of the Federal government.**

This FOIA request seeks information relevant to government’s management of the Reserve and its analysis of the Willow project under the National Environmental Policy Act (NEPA). The requested records relate to EPA’s engagement in and contributions to BLM’s management decisions and NEPA analysis. The requested records will enable Conservation Lands

Foundation to evaluate the strength of and basis for the government's analysis underlying its decisions and conclusions regarding oil and gas activities in the Reserve, including the impacts of those activities on the Reserve's resources and on the people who depend on those resources. Accordingly, the request directly implicates identifiable operations and activities of the Federal government.

**2. The disclosure is likely to contribute significantly to public understanding of operations or activities of the government.**

This request concerns oil and gas activities in the Reserve and the activities' impacts on the Reserve and also the global climate, issues that are of significant public interest. The requested records are meaningfully informative and will significantly enhance public understanding of EPA's role, decision-making, and actions relating to Willow project and the government's management of the Reserve and Alaska's Arctic as a whole. These records will allow Conservation Lands Foundation to evaluate the adequacy of the agencies' consideration and approval of oil and gas activities in the Reserve and the sufficiency of its environmental review, facilitating public oversight of government operations and activities. Given EPA's role as a cooperating agency in the supplemental EIS process, the requested records will provide insights into how BLM may have incorporated or otherwise responded to any assessments, critiques, comments, or concerns EPA may have raised regarding the Willow project. The requested documents are therefore critical to a meaningful assessment and a thorough understanding by the public of the BLM's and EPA's operations and activities with regard to the project, including the agencies' compliance with NEPA.

The requested documents are not available on EPA's website or otherwise in the public domain. They will not be duplicative of other documents already publicly available. Disclosure will enable both public evaluation of and enhance public knowledge concerning the agency's decision-making. *Cf. Nat. Res. Def. Council, Inc. v. EPA*, 581 F. Supp. 2d 491, 501 (S.D.N.Y. 2008) ("The public's understanding of [an agency's] decisionmaking will be significantly enhanced by learning about the nature and scope of [the agency's] communication with commercial interests.").

Conservation Lands Foundation is a public interest organization dedicated to protecting the environment, public resources, and human health through, among other mechanisms, monitoring government management of public lands, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. Conservation Lands Foundation is the only organization in the country dedicated to safeguarding the National Conservation Lands – i.e., the premier public lands, rivers, and trails managed by the Bureau of Land Management. Conservation Lands Foundation's mission is to protect, restore, and expand the system of National Conservation Lands through education, advocacy, and partnerships. Conservation Lands Foundation created, developed, and has grown the Friends Grassroots Network, a collection of more than seventy local groups and organizations from

around the nation dedicated to protecting, restoring, and expanding BLM's conservation mission.

Conservation Lands Foundation has invested, and continues to invest, significant time in monitoring government management of public lands and resources, including in the Reserve. Conservation Lands Foundation has professional staff who specialize in government policy, advocacy, and public outreach. It works actively in partnership with other nonprofit organizations, scientists, local communities, federally recognized Tribes, and other individuals and entities confronting the risks of oil and gas activities on public lands, including the Reserve.

Conservation Lands Foundation and its collaborators intend to evaluate and disseminate information in the requested records through various means, including newsletters, member emails, articles, a website, and through other formal and informal communications. Conservation Lands Foundation and its collaborators have the expertise and experience to evaluate this information and disseminate it widely. This background and commitment to public outreach support a fee waiver. *See Friends of the Coast Fork v. U.S. Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997); *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases finding "statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver").

**3. Conservation Lands Foundation has no commercial interest in the disclosure of the information.**

Conservation Lands Foundation is a non-profit organization that has no commercial interest in the requested records. *See Friends of the Coast Fork*, 110 F.3d at 54 ("FOIA requires the federal government to furnish documents to public interest groups free of charge, or at a reduced rate" if in the public interest).

Please contact us if you have any questions, or if we can clarify this request in any way. We can be reached at [ikorhonen@earthjustice.org](mailto:ikorhonen@earthjustice.org) or [jlieb@earthjustice.org](mailto:jlieb@earthjustice.org). As provided by FOIA, 5 U.S.C. § 552(a)(6)(A), we look forward to a reply within twenty working days. Thank you in advance for your assistance.

Sincerely,

Iris Korhonen-Penn, Litigation Paralegal  
Jeremy Lieb, Senior Attorney  
EARTHJUSTICE